

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1163

City of Tamarac, Broward County

SPONSOR(S): Seiler

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Urban & Local Affairs</u>	<u>7 Y, 0 N</u>	<u>Nelson</u>	<u>Kruse</u>
2) <u>Government Efficiency & Accountability Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill provides for the annexation by the City of Tamarac of four unincorporated Broward County areas generally located at the intersection of Commercial Boulevard and N.W. 31st Avenue. The bill requires the Broward County Board of County Commissioners to schedule a referendum on March 11, 2008, to allow the residents of Boniello Gardens and Prospect Bend to vote to be annexed by the City of Tamarac. The annexation will become effective on September 15, 2008, upon approval of a majority of the registered voters residing in the subject areas. Also, the bill provides that the property owners of two commercial properties will be deemed a part of the City of Tamarac on September 15, 2008, if this bill is passed by the Legislature.

The bill further provides for: an interlocal agreement to be developed between the governing bodies of Broward County and the City of Tamarac; changes in land use or zoning designations; the continuation of current uses, buildings or structures; a suspension of land use designations, zoning and annexation between the effective date of the act and the effective date of annexation; residency status for municipal office candidacy; the continuation of contracts; and the transfer of public roads and public rights-of-way.

The law provides an effective date of upon becoming law.

According to the Economic Impact Statement, it is estimated that the City of Tamarac's incremental cost for the annexation will be negligible due to the fact that the City currently provides municipal services to the neighborhoods immediately surrounding and adjacent to the proposed annexation sites. Broward County tentatively has agreed to provide funding for stormwater drainage and related roadway infrastructure of approximately \$512,000. The City of Tamarac anticipates that it will raise \$308,153 in ad valorem taxes and non-ad valorem fire assessment fees in FY 2007-2008 and \$323,561 in FY 2008-2009.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

This bill will transfer certain responsibilities relating to annexed property from Broward County to the Town of Tamarac.

Ensure Lower Taxes

The effect of the bill on individual taxpayers in any annexed area is unknown.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional/Statutory Provisions Relating to Annexation¹

Section 2 (c), of Art. VIII of the State Constitution provides that “[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.” This provision authorizes the Legislature to annex unincorporated property into a municipality by special act. It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F. S., the “Municipal Annexation or Contraction Act.” Chapter 171, F. S., describes the ways that property can be annexed or deannexed by cities without passage of an act by the Legislature. In 2006, this chapter was expanded to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property.²

Requirements for Annexation

Before local annexation procedures may begin, pursuant to s. 171.042, F.S., the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, plans for extending municipal services, timetables and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements described by s. 171.043, F.S.:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.³
- The area to be annexed must be reasonably compact.⁴

¹ The term “annexation” is defined in the Florida Statutes to mean “the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality.” See, s. 171.031(1), F.S.

² See, part II of ch. 171, F.S., the “Interlocal Service Boundary Agreement Act.”

³ This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.

⁴ Section 171.031(12), F.S., defines “compactness” as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.

- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.⁵
- Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas for the extension of municipal services.

Annexed areas are declared to be subject to taxation (and existing indebtedness) for the current year on the effective date of the annexation, unless the annexation takes place after the municipal governing body levies such tax for that year. In the case of municipal contractions, the city and county must reach agreement on the transfer of indebtedness or property—the amount to be assumed, its fair value and the manner of transfer and financing.⁶

Types of Annexations

Voluntary Annexation

If the property owners of a reasonably compact, unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. Section 171.044 (4), F. S., provides that the procedures for voluntary annexation are “supplemental to any other procedure provided by general law or special law.” The following process governs voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- submission of a petition—signed by all property owners in the area proposed to be annexed—to the municipal governing body; and
- adoption of an ordinance by the governing body of the municipality to annex the property after publication of a notice—which sets forth the proposed ordinance in full—at least once a week for two consecutive weeks.

The governing body of the municipality also must provide a copy of the notice to the board of county commissioners of the county where the municipality is located.

In addition, the annexation must not create enclaves. An enclave is: (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.⁷

Involuntary Annexation

A municipality may annex property where the property owners have not petitioned for annexation pursuant to s. 171.0413, F. S. This process is referred to as “involuntary” annexation. In general, the requirements for an involuntary annexation are:

- the adoption of an annexation ordinance by the annexing municipality's governing body;
- at least two advertised public hearings held by the governing body of the municipality prior to the adoption of the ordinance, with the first hearing on a weekday at least seven

⁵ An area developed for urban purposes is defined as an area which meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less.

⁶ See, s. 171.061, F.S.

⁷ Section 171.031(13), F.S.

- days after the first advertisement and the second hearing held on a weekday at least five days after the first advertisement;⁸ and
- submission of the ordinance to a vote of the registered electors of the area proposed for annexation once the governing body has adopted the ordinance.⁹

Any parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed cannot be severed, separated, divided or partitioned by the provisions of the ordinance, unless the owner of such property waives this requirement.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes part of the city. If there is no majority vote, the area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations or legal entities which are not registered electors of such area, the area cannot be annexed unless the owners of more than 50 percent of the land in such area consent to the annexation. This consent must be obtained by the parties proposing the annexation prior to the referendum.

If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. The area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality, then the property owner consents must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance.

Effect of Annexation on an Area

Upon the effective date of an annexation, the area becomes subject to all laws, ordinances and regulations in force in the annexing municipality. An exception occurs pursuant to s. 171.062(2), F.S., in that if the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in effect until the municipality adopts a comprehensive plan amendment that includes the annexed area. In contractions, excluded territory is immediately subject to county laws, ordinances and regulations.

Any changes in municipal boundaries require revision of the boundary section of the municipality's charter. Such changes must be filed as a charter revision with the Department of State within 30 days of the annexation or contraction.¹⁰

Appeal of Annexation or Contraction

Affected persons who believe they will suffer material injury because of the failure of a city to comply with annexation or contraction laws as applied to their property can appeal the annexation ordinance. They may file a petition within 30 days following the passage of the ordinance with the circuit court for the county in which the municipality is located seeking the court's review by certiorari. If an appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.¹¹

⁸ This new requirement was passed by the 1999 Legislature.

⁹ In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality.

¹⁰ Section 171.091, F.S.

¹¹ Section 171.081, F.S.

Broward County Annexations

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles with a population of approximately 1.8 million residents.¹² Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

The 1996 Florida Legislature adopted a special act¹³ which describes Broward County as having "numerous scattered unincorporated pockets which reflect the haphazard manner in which annexation into municipalities has taken place over the years by the application of general annexation laws of the state...." This law requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to general law first must be considered at a public hearing conducted by the Broward County Legislative Delegation, pursuant to its adopted rules. The annexation is not effective until the 15th day of September following adjournment sine die of the next regular legislative session following the completion of all necessary procedures for annexation.

That same year, in cooperation with the Broward County Board of County Commissioners, the Broward County Legislative Delegation created the "Ad Hoc Committee on Annexation Policy." The delegation charged the committee with the responsibility of developing and recommending policy regarding future annexations. The committee recommended that annexation of all unincorporated areas of Broward County be encouraged to occur by the year 2010, and that any remaining unincorporated areas would be subject to annexation by the Florida Legislature. In 2001, this goal was changed to the year 2005.

The Broward County Legislative Delegation sponsors several local annexation bills each year.

Effect of Proposed Changes

This bill provides for the annexation by the City of Tamarac of four unincorporated Broward County areas generally located in the area of the intersection of Commercial Boulevard and N.W. 31st Avenue:

- Boniello Gardens (19 residential buildings, each with four units, on approximately four acres located on the east side of W. Prospect Road at N.W. 52nd Avenue);
- Prospect Bend (residential and commercial properties on approximately 73 acres located along W. Prospect Road on the east side of N.W. 31st Ave.);
- Continental Plaza (a commercial retail center located on the south side of West Commercial Boulevard, with an address of 3660 W. Commercial Boulevard); and
- A BP Gas Station (a commercial property located on approximately three quarters of an acre at the northwest corner of Commercial Boulevard and N.W. 31st Avenue).

The bill requires the Broward County Board of County Commissioners to schedule a referendum¹⁴ on March 11, 2008, to be held in conjunction with a municipal election, to allow the residents of Boniello Gardens and Prospect Bend to vote to be annexed by the City of Tamarac. The annexation will become effective on September 15, 2008, if a majority of the registered voters residing in the subject areas vote in favor of being annexed. The property owners of Continental Plaza and the BP Gas Station will be deemed a part of the City of Tamarac on September 15, 2008, if this bill is passed by the Legislature.¹⁵

An interlocal agreement between the City of Tamarac and Broward County must be executed prior to the effective date of the annexation. This agreement will address infrastructure improvement projects

¹² Florida Estimates of Population 2006, Bureau of Economic and Business Research, University of Florida.

¹³ Chapter 96-542, L.O.F., as amended by ch. 99-447, L.O.F.

¹⁴ Mail ballots cannot be used in this election; however, voters may vote by absentee ballots, as provided by law.

¹⁵ Broward Legislative Delegation staff provided petitions requesting "voluntary annexation" from the owner of Continental Plaza on March 15, 2007. No documentation has been received regarding the preferences of the gas station owner.

and a financially feasible plan for transitioning county services, buildings, infrastructure, waterways and employees.

Upon annexation, the areas will be governed by the relevant land use and zoning provisions of the City of Tamarac's Code of Ordinances. Any change of the zoning districts or land use designations may only be accomplished by enactment of a supermajority vote of the full governing body of the municipality. Any use, building or structure that is legally in existence at the time of annexation may not be made a prohibited use by the City of Tamarac, on the property of said use, for as long as the use continues and is not voluntarily abandoned.

Subsequent to the effective date of the act, no change in land use designation or zoning will be effective within the limits of the property subjected to annexation until the area has been annexed into the municipality; and no annexation within the subject area may occur between the effective date of the act and the effective date of the annexation.

Any resident in the area annexed by the act into the City of Tamarac will be deemed to have met residency requirements for candidacy for municipal office. The act further provides that nothing in the act is to be construed to affect or abrogate the rights of parties to any contracts, whether between Broward County and a third party or between nongovernmental entities, which are in effect prior to the annexation.

Finally, the bill transfers all rights, title, interests and responsibilities for any public roads and associated public rights-of-way in the Broward County Road System within the limits of any annexed property, including, but not limited to, the ownership, operation, maintenance, planning, design and construction of said roads and the rights-of-way, from Broward County to the City of Tamarac upon the effective date of the annexation.

The law provides an effective date of upon becoming law.

C. SECTION DIRECTORY:

Section 1: (1) Provides a legal description for Boniella Gardens.

(2) Provides a legal description for Prospect Bend.

Section 2: (1) Provides a legal description for the Continental Plaza property.

(2) Provides a legal description for the BP gas station property.

Section 3: Provides for an election.

Section 4: Provides for the annexation of properties described in Section 2.

Section 5: Provides for annexation of properties described in Section 1.

Section 6: Provides for an interlocal agreement.

Section 7: Provides for changes in land use and zoning designations, and allowed uses of property.

Section 8: Provides for continuation of land use designations and zoning, and suspension of annexation.

Section 9: Provides residency status for municipal elections.

Section 10: Provides for continuation of contracts in effect prior to the effective date of the annexation.

Section 11: Provides for transfer of public roads and rights-of-way.

Section 12: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 12, 2007

WHERE? The *Sun-Sentinel*, a daily newspaper of general circulation published in Broward County.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? March 11, 2008.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the Economic Impact Statement, it is estimated that the City of Tamarac's incremental cost for the annexation will be negligible due to the fact that the City currently provides municipal services to the neighborhoods immediately surrounding and adjacent to the proposed annexation sites. Broward County tentatively has agreed to provide funding for stormwater drainage and related roadway infrastructure of approximately \$512,000. The City of Tamarac anticipates that it will raise \$308,153 in ad valorem taxes and non-ad valorem fire assessment fees in FY 2007-2008 and \$323,561 in FY 2008-2009.¹⁶

The Economic Impact Statement provides that the City of Tamarac will benefit from increased revenues due to this annexation. Broward County will benefit by no longer having to provide municipal services to the proposed annexation sites. Each individual taxpayer within the proposed annexation sites will benefit from the City of Tamarac's "high level of localized municipal services," and also will be represented by a municipal government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

¹⁶ The anticipated revenue increase was estimated based on the current taxable values of the properties and the property types contained in the proposed annexation sites. Revenues were calculated for FY 2007-2008 by applying the city's current millage rates (ad valorem taxes) along with the city's current fire assessment rates (non-ad valorem fire assessments). An estimated five percent growth factor was applied for FY 2008-2009.

The Sponsor intends to offer an amendment that will correct several technical matters in the bill.

Other Comments

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create an exemption to s. 171.062(1), F.S., which provides that an area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality, via the "continued use" provisions in Section 7. The bill additionally may create an exemption to s. 125.01, F.S., which gives counties the authority to prepare and enforce comprehensive plans, and establish and enforce zoning ordinances, as well as the Local Government Comprehensive Planning and Land Development Regulation Act found at part II of ch. 163, F.S., in that Section 8 prohibits a county from changing land use designations or zoning in the area proposed for annexation after the effective date of the act.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its meeting on March 21, 2007, the Committee on Urban & Local Affairs adopted two amendments. Amendment 1 reconfigures and rewrites sections of the bill for better readability, and removes unnecessary language. Amendment 2 provides a revised legal description for Continental Plaza and deletes a Broward County road from the transfer provision of the bill.